

Administrative Conference of the U.S.

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operations or activities of the government is “important” enough to be made public.

(3) To determine whether the second fee waiver requirement is met, the agency will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The agency will consider any commercial interest of the requester (with reference to the definition of “commercial use” in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The agency ordinarily will presume that where a news-media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed primarily to serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (k)(3) of this section insofar as they apply to each request. The agency will exercise its discretion to consider the cost-effectiveness of its investment of administrative resources in this decision-making process in deciding to grant waivers or reductions of fees.

§ 304.10 Preservation of records.

(a) The agency will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration’s General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) In the event that the agency contracts with another agency, entity, or person to maintain records for the agency for the purposes of records management, it will promptly identify such records in its “Freedom of Information Reference Guide” and specify the particular means by which request for such records can be made.

§ 304.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

AUTHORITY: 5 U.S.C. 552a, 591–96.

§ 304.20 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Administrative Conference of the United States (“ACUS” or “the agency”) follows under the Privacy Act of 1974 (“the Privacy Act”), 5 U.S.C. 552a, as amended, regarding the protection of, and individual access to, certain records about individuals. These rules should be read together with and are governed by the Privacy Act itself, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in Privacy Act systems of records maintained by the agency, which are retrieved by an individual’s name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request

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amendment or correction of those records, and request an accounting of disclosures of those records by the agency. In addition, the agency processes all Privacy Act requests for access to records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552, *as amended*, following the rules contained in subpart A of this part. Thus, all Privacy Act requests will be subject to exemptions for access to records only applicable under both FOIA and the Privacy Act.

(b) *Definitions.* As used in this subpart:

(1) “Request for access to a record” means a request made under Privacy Act, 5 U.S.C. 552a(d)(1).

(2) “Request for amendment or correction of a record” means a request made under Privacy Act, 5 U.S.C. 552a(d)(2).

(3) “Request for an accounting” means a request made under Privacy Act, 5 U.S.C. 552a(c)(3).

(4) “Requester” means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

§ 304.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a record about yourself by appearing in person or by sending an e-mail message addressed to info@acus.gov. You may also send a written request letter to the agency either by mail addressed to 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386-7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope “Privacy Act Request.”

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable agency personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The agency publishes a notice in the FEDERAL REG-

ISTER that describes its systems of records.

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it will be considered an agreement by you to pay all applicable fees charged under § 304.27, up to \$50.00. Duplication fees in excess of \$50.00 are subject to the requirements of § 304.27 of this subpart and the notification requirements in § 304.9 of subpart A. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, entirely at your option, include the last four digits of your social security number.

§ 304.22 Responsibility for responding to requests for access to records.

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for access to a record in its possession and control, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the agency determines